

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3562 of 2010 (O&M)

Date of Order:6th February, 2019

Harish Chander and others

..Appellants

Versus

Bheri Ram (since deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chetan Mittal, Sr. Advocate, with
Mr. Himanshu Gupta, Advocate,
for the appellants.

Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the learned trial court.

In the considered view of this court questions of law which arise for determination are:-

(1) Whether the first appellate court was correct in recording a finding that Hari Chand was adopted son of Piara Mal in absence of the plea in the written statement or evidence in support thereof.

(2) Whether a widow of a maternal grand son has any pre-existing right of maintenance in the property of maternal grand father and consequently her life interest

the Will, it is apparent that late Sh. Piara Mal has got recorded in the Will that he had brought up Hari Chand i.e. son of his daughter Hemi Bai and got him married. However, Hari Chand died after few months and her widow Ram Piari is staying in his house. It is further recorded that he consider his moral duty to make arrangement for her upkeep so that she can continue to live. It was got recorded that initially Smt. Tikkan Bai, widow, would get life estate and after her death 7/32th share would stand bequeathed in favour of Dala Mal and Dev Raj (son and grand son of brother of the Testator Suhar Mal). It was further provided that remaining 25/32 shares would equally stand bequeathed in favour of Khushan Bai, Hemi Bai and Ram Piari in equal share-life estate but they would have no right to alienate the property. It was further recorded that after the death of Ram Piari, his two daughters, namely Khushan Bai and Hemi Bai would be owner of the property and after the death of his daughters, property would stand bequeathed in favour of their children. It was further provided that if Smt. Ram Piari widow of Hari Chand re-marries, the property would revert back to his daughters.

Dispute in the present appeal is with respect to two aspects. First appellate court while reversing the judgment of the trial court has recorded that Hari Chand was adopted son of late Sh. Piara Mal. First appellate court has also recorded that Ram Piari became absolute owner of the property bequeathed in her favour because of operation of Section 14 (1) of the Hindu Succession Act, 1956, although, limited life estate was given in the Will.

Learned senior counsel for the appellants while drawing attention of the court to the written statement has submitted that either in the

testament or in the written statement or in the evidence defendant has failed to prove that Hari Chand was adopted son of Piara Mal. Hence, he submitted that in absence thereof first appellate court clearly committed an error while recording such finding even in absence of any issue to this effect. Learned counsel appearing for the respondent very fairly admitted that with regard to adoption of Hari Chand there are no pleadings. On careful perusal of the testament dated 22.09.1929, correctness whereof is admitted between the parties establishes that Hari Chand who had died before execution of the Will has been referred to as son of daughter Hemi Bai, however, it has been stated that Hari Chand has been brought up by the testator. Had Hari Chand been adopted by late Sh. Piara Mal it would have got it recorded in the testament. Further no cogent evidence has come on record to prove that Hari Chand was ever adopted by late Sh. Piara Mal, the testator. Hence, the finding of the first appellate court are clearly erroneous on this aspect and therefore are set aside.

Now let us deal with the second issue. On reading of the testament, it is apparent that the testator had considered that it was his moral obligation to take care of widow of maternal grand son. It was on account of this reason that he made a provision for her, but limited it to her life. It was further recorded in the testament that if she re-marries her right in the property would come to an end. Therefore, the intention of the testator was clear. Still further ultimately the property was to revert back to the daughters namely Khushan Bai and Hemi Bai and thereafter to their respective children. In other words, $\frac{1}{3}$ rd share of $\frac{25}{32}$ share in the property on the death of Ram Piari was to revert back and equally divided amongst Khushan Bai and Hemi Bai or their children.

Learned counsel for the appellants has relied upon a recent judgment of the Hon'ble Supreme Court in the case of **Mr. Ranvir Dewan vs. Mrs. Rashmi Khanna and another, AIR 2018 SC 62** in support of his contention. Whereas on the other hand learned senior counsel appearing for the respondent has relied upon a judgment passed by the Hon'ble Supreme Court in the case of **Subhan Rai and another vs. Parvathi Bai and others, (2010) 4 SCC (Civil) 141**. Learned counsel has further relied upon judgment passed by the Hon'ble Supreme Court in the case of **Vaddeboyina Tulasamma and others v. Vaddeboyina Sessa Reddi (dead) by L.Rs, (1977) 3 SCC 99**.

At the outset, it must be noted that all the judgments are interpreting Section 14 of the Hindu Succession Act, 1956. In the latest decision relied upon by learned counsel for the appellants in the case of **Ranvir Dewan (supra)**, it may be noted that the Hon'ble Supreme Court after noticing the judgment passed in the case of **Vaddeboyina Tulasamma and others(supra)** and **Sadhu Singh v. Gurudwara Sahib Narike and others (2006) 8 SCC 75**, have held that the case has to be decided on facts and on interpretation of Section 14(1) and (2) of the Act. In the aforesaid case, Hon'ble Supreme Court was dealing with a situation where the owner while executing a testament had given limited estate/ life estate to his wife. On interpretation of the aforesaid testament, Hon'ble Supreme Court held that limited estate/life estate given to Mrs. Pritam would not enlarge into absolute/full ownership.

The judgment which has been relied upon by learned counsel for the respondent, no doubt, interpret sections 14(1) and (2) of the Act but in the aforesaid case, limited estate was initially given to a son from

concubine and thereafter took his wife. Still further in the aforesaid case, it is apparent that the parties went to trial on an agreed premise that she had a pre-existing right of maintenance and she was given the right to enjoy the land in lieu of her maintenance. It was in that context, the Hon'ble Supreme Court held that her limited estate enlarges into absolute ownership. In the aforesaid case, she was daughter in law of a son from concubine.

In the present case, it is apparent that but for moral obligation late Sh. Piara Mal was not obliged to maintain Ram Piari as she was daughter in law of his daughter or in other words, wife of maternal grand son. Attention of the court has not been drawn to any law to the effect that maternal grand father is liable to maintain widow of maternal grand son.

In this case the issue can be examined from another angle. It is not in dispute that Ram Piari had inherited the property from the estate left by her father in law. Smt. Ram Piari was not having any child. She has executed the testament in favour of defendants no.1 to 3 successor in interest of Hemi Bai. If the court holds that Smt. Ram Piari had got absolute right, the heirs of Hemi Bai would get $2/3^{\text{rd}}$ out of the property bequeathed by Piara Mal for the daughters, although, Piara Mal had bequeathed property to her daughters or their successors in equal share. Therefore, even on equity, Smt. Ram Piari or defendants, her successors, do not have a case. Smt. Ram Piari had lived her life and during her life time she enjoyed property not only from her maternal grand father of her husband but also from her father in law. She does not have any child. Therefore, all the property is ultimately going to the successors of Hemi Bai which would not be equitable.

Keeping in view the aforesaid facts, it is declared that Smt.

Ram Piari did not become absolute owner of the property and her life estate does not enlarge to full ownership.

Accordingly both the questions are answered in favour of the appellants. The judgment passed by the first appellate court to that extent is set aside and that of the trial court is restored.

The regular second appeal is allowed.

6th February, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No